IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6123 of 2002

Between:

Smt. Jupalli Jayaprada, W/o late Narasimha Rao,
R/o H.No.10-3-8, Bus Depot Road,
Near Masjid, Khammam

..... PETITIONER

AND

1. The District Collector,
   Khammam.
2. The Revenue Divisional Officer,
   Khammam Urban, Khammam.
3. The Mandal Revenue Officer,
   Khammam Urban Mandal, Khamma.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of WRIT of MANDAMUS declaring the action of the Respondent No. 3 in seeking to assign rocky, hilly terrain unfit for cultivation by leaving aside available cultivable fertile land vide the order and notice of the Respondent No.3 in R.C.No.B/317/86, dt: 14-2-2001, Notice dt: 7-4-01 as arbitrary, illegal, unfair, unjust, vitiated due to official malafides unconstitutional and is violative of articles 14 and 21 of the Constitution of India.

Counsel for the Petitioner: MR.P.RADHAKRISHNA

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

THE HON'BLE MS. JUSTICE G. ROHINI

W.P.No.6123 of 2002

ORDER:

The petitioner is the widow of a freedom fighter. It is not in dispute that an extent of 10 acres situated in Sy.No.79 of M.Chintagurthi Village was assigned to her by the then Tahsildar, Khammam, by proceedings dated 26-07-1971, but physical possession was not given to her on the ground that the said land is situated in the reserve forest area. However, the assignment itself was cancelled by the 3rd respondent herein by proceedings dated 04-08-1998 on the ground that the land was not brought under cultivation within three years as required under the law. Against the said order the petitioner preferred an appeal before the 2nd respondent which was disposed of by order dated 29-05-2000 with a direction to the Mandal Revenue Officer, Khammam, Urban Mandal to select suitable land in any village of his Mandal and assign the same to the petitioner. In the meanwhile, the 3rd respondent-Mandal Revenue Officer, Khammam Urban Mandal, on the basis of the report of the Mandal Revenue

Inspector dated 30-07-1999 assigned 5 acres of land situated in Sy.No.266 of M.Chintagurthi Village vide proceedings dated 02-08-1999.

While so, the petitioner filed W.P.No.14994 of 2000 seeking a declaration that the alleged inaction on the part of the respondents in identifying and assigning the land to the petitioner as arbitrary and illegal. This Court though declined to grant the direction as sought by the petitioner to assign and put her in possession of any particular land chosen by her, keeping in view of the subsequent order passed by the Revenue Divisional Officer, Khammam, dated 29-05-2000 wherein, the Mandal Revenue Officer was directed to select a suitable land and assign the same to the petitioner, disposed of the writ petition with a direction to the respondents to implement the order passed by the Revenue Divisional Officer, Khammam, dated 29-05-2000 and to identify suitable land in terms of the said order and assigne the same to the petitioner and put her in possession expeditiously, within four months from the date of receipt of the said order.

In pursuance thereof, the Mandal Revenue Officer, Khammam, by proceedings, dated 14-02-2001 assigned an extent of 5 acres of land in Sy.No.266/1 of Mallepally M.Chintagurthi Village which is in addition to the 5 acres of land already assigned under the proceedings dated 02-08-1999. Consequently by notice dated 07-04-2001 the petitioner was directed to appear in person to take delivery of possession of the total extent of 10 acres assigned land situated in Sy.No.266/1 M.Chintagurthi Village.

The said action of the respondents is under challenge in this writ petition contending that the land assigned under the proceedings dated 02-08-1999 and 07-04-2001 is barren, and rocky hillock which is unfit for any cultivation. It is alleged that the 3rd respondent-Mandal Revenue Officer has deliberately assigned the said land which is unfit for cultivation to wreak vengeance against her since she approached this Court for redressal of her grievance. It is claimed that as a matter of fact, suitable Government vacant lands are available in Sy.Nos.66 and 37 of Khanapuram Haveli Village and Sy.Nos.79/1

and 79/119 of M.Chintagurthi Village and there is absolutely no justifiable reason for not assigning the said land to the petitioner.

Thus, the petitioner seeks a declaration that the action of the respondent No.3 in assigning the land which is unfit for cultivation in spite of the availability of the cultivable land is arbitrary and illegal and in violation of Article 14 and 21 of the Constitution of India.

On behalf of the respondents the Mandal Revenue Officer, Khammam (U) Mandal filed a counter affidavit denying all the allegations made by the petitioner and stating that the land assigned to the petitioner in Sy.No.266/1 of M.Chintagurthi Village is fit for cultivation. The allegation that the said land is barren and rocky hillock and unfit for cultivation and that the same was deliberately assigned to her by the 3rd respondent, has been specifically denied and it is stated that the land assigned in favour of the petitioner is fit for cultivation as per the certificate issued by the Agricultural Officer, Khammam (U). It is further stated that 2 acres 23 cents situated in Sy.No.66 of Khanapuram Haveli is acquired for the purpose of Aerodrome and also for the purpose of offices of the Government, and as such, there is no land available for assignment for agricultural purpose in the said Village. So far as the land specified by the petitioner in Sy.No.37 of Khanapuram Haveli Village, it is stated that the said land was already assigned to the Scheduled Castes and Scheduled Tribes and Backward Classes and therefore, no such land is available for assignment. It is further stated that 10 acres of land situated in Sy.Nos.79/1 and 79/119 of M.Chintagurthi Village has been grabbed by the poor tribals who have brought the land into cultivation and as such the said land is also not available for assignment.

On the basis of the said counter affidavit, the learned Government Pleader contends that the writ petition is misconceived and liable to be dismissed. He also contends that the petitioner being an assignee does not have any vested right to claim the assignment and she cannot insist for allotment of any particular land in a particular place and therefore, the writ

petition is liable to be dismissed in limini.

Along with the counter affidavit, a certificate dated
13-09-2002 issued by the Agricultural Officer, Khammam (U) Mandal has been produced before this Court which shows that the Agricultural Officer has inspected the land to an extent of 10 acres situated in Sy.No.266/1 of M.Chintagurthi Village on 13-09-2002 and during the inspection it was found that the land is situated at the hill slope and occupied with small bushes and that the land can be put to use for cultivation after removing the bushes and leveling the land. It is also stated that the adjacent lands are being cultivated with dry crops like green gram, red gram and arched crops like Mango tamerind and Amla.

Having heard the learned counsel appearing for both the parties and on a perusal of the material on record, it is clear that in lieu of the land assigned to the petitioner initially in the year 1971, the respondents have assigned alternative land situated in Sy.No.266/1 of M.Chintagurthi Village. As can be seen from the certificate issued by the Agricultural Officer, dated 13-09-2002, the said land is situated in hill slope and is occupied with small bushes. Whereas the petitioner alleges that the said land is not fit for cultivation, the respondents contend that it can be brought under cultivation by removing the bushes and leveling the land and that dry crops are being raised in adjacent lands, which are also of similar nature. The question whether the said land is fit for cultivation or not, being a disputed question of fact cannot be investigated into by this Court while exercising the jurisdiction under Article 226 of the Constitution of India. Similarly, the question whether the land in Sy.No.66 and 37 of Khanapuram Haveli Village, as claimed by the petitioner, is available for assignment also cannot be decided by this Court, particularly when the said plea has been categorically denied by the respondents. At any rate, as already held by this Court in W.P.No.14994 of 2004, the respondents cannot be directed to assign and put the petitioner into possession of any particular land chosen by her and such course is not permissible under law.

In the circumstances, I am not inclined to issue a mandamus as prayed for. However, having regard to the facts and circumstances of the case, the second respondent-Revenue Divisional Officer, Khammam (U), is directed to enquire into the nature of the land assigned to the petitioner and to decide whether it is fit for cultivation. Needless to mention that the 2nd respondent shall afford an opportunity to the petitioner to raise her objections, before taking any decision. It is also made clear that in case, it is found that the said land is not fit for cultivation, the 2nd respondent shall take immediate steps for identifying any other suitable land, particularly the land in Sy.No.66 and 37 of Khanapuram Haveli, if available for assignment, and assign the same to the petitioner. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

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G. ROHINI, J

Dated: 27-12-2004

LSK

To

1. The District Collector, Khammam.

2. The Revenue Divisional Officer,

Khammam Urban, Khammam.

3. The Mandal Revenue Officer,

Khammam Urban Mandal, Khammam.

4. Two C.Cs. to the Government Pleader for Revenue,

High Court Buildings, Hyderabad. (OUT).

5. Two C.D. copies.